

Decision 01-10-035

October 10, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of San Diego Gas & Electric Company (U-902-E) for an Order Implementing Assembly Bill 265.

Application 00-10-045
(Filed October 24, 2000)

Application of San Diego Gas & Electric Company (U-902-E) for Authority to Implement an Electric Rate Surcharge to Manage the Balance in the Energy Rate Ceiling Revenue Shortfall Account.

Application 01-01-044
(Filed January 24, 2001)

ORDER DENYING REHEARING OF DECISION (D.) 01-09-059

On September 20, 2001, the Commission issued Decision (D.) 01-09-059. D.01-09-059 is one of a series of decisions related to the implementation of the Department of Water Resources' ("DWR") revenue requirement under Assembly Bill (AB) 1 from the First Extraordinary Session ("AB 1X"), signed into law on February 1, 2001. In D.01-09-059, the Commission: 1) established an interim charge of 9.02 cents per kilowatt-hour (kWh) payable by customers of San Diego Gas & Electric Company ("SDG&E") to the California Department of Water Resources; and 2) increased SDG&E's system-average retail rate by 1.46 cents per kWh to implement the interim charge.

On October 1, 2001, the City of San Diego ("City") filed a timely application for rehearing. In its rehearing application, the City alleges that the Commission committed legal error by failing to provide for the collection of

municipal franchise fees on revenues associated with DWR's sale of power to SDG&E customers.

The City asserts that under both the Public Utilities Code and the California Constitution, it is entitled to receive franchise fees from revenues generated from DWR's sale of power to SDG&E customers. (Application at p. 3.) It notes that under Section 103.1 of its City Charter, "any person, firm, or corporation supplying the inhabitants of the City with power in the nature of a public utility must have a franchise ordained by the City Council," and that under Section 105 of its Charter, consideration must be paid for the franchise. (Application at pp. 4-5.) Therefore, the City maintains that the Commission erred by not specifying whether DWR or SDG&E is responsible for collecting and paying franchise fees on behalf of DWR. (Application at p. 6.) We have carefully considered all the arguments presented by the City and are of the opinion that no grounds for rehearing have been demonstrated. We therefore deny the City's application for rehearing of D.01-09-059.

The City's main concern is that it will not receive franchise fees from DWR's power sales to its residents. This concern is unfounded. In accordance with Ordering Paragraph 3 in D.01-09-059, San Diego Gas and Electric Company ("SDG&E") filed an advice letter updating its tariffs to implement the new rates ordered by the Commission. These new tariffs preserve the status quo by including franchise fees due to municipalities for revenues derived from DWR's power sales to SDG&E customers. (Cal. P.U.C. Sheet No. 14837-E, submitted in SDG&E Advice Letter, dated September 27, 2001.) Thus, the City is receiving franchise fees on revenues associated with DWR's power sales to San Diego residents.

Not only has the City failed to demonstrate that it has been harmed by this decision, but it has also not provided any legal basis for finding error. Contrary to the City's assertions, nothing in this decision abridges any rights that the City may have to franchise fees associated with DWR's power sales under

either San Diego's City Charter or the Public Utilities Code. While D.01-09-059 does not directly address whether any franchise fees owed by DWR to the municipalities would be collected and paid by DWR or SDG&E, SDG&E's tariffs have done so. These tariffs, which were effective September 30, 2001, specifically state that SDG&E will collect and remit franchise fees to the municipalities on DWR's behalf. The decision properly determined that any issues relating to franchise fees are more appropriately addressed in a proceeding involving all three utilities. The City would be provided an opportunity to participate in that proceeding. Consequently, our decision in D.01-09-059 is not in error.

In its rehearing application, the City notes that it previously raised this issue in comments filed in this proceeding, as well as in comments filed in other related proceedings (A.00-11-038 and A.01-06-039). It then incorporates by reference all these comments in this application for rehearing. Under Public Utilities Code section 1732, "[t]he application for a rehearing shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful." Additionally, Rule 86.1 of the Commission's Rules of Practice and Procedure notifies rehearing applicants that they must be specific in their allegations of error.¹ The City's incorporation of an entire document "by reference" does not meet the specificity requirements of section 1732 and Rule 86.1. However, in this instance, the City's rehearing application raised the same issue as its filed comments, thereby complying with Section 1732 and Rule 86.1.

¹Rule 86.1 states in relevant part:

"Applications for rehearing shall set forth specifically the grounds on which applicant considers the order or decision of the Commission to be unlawful or erroneous. . . . The purpose of an application for rehearing is to alert the Commission to an error, so that error may be corrected expeditiously by the Commission."

(Cal. Code of Regs., Tit. 20, § 86.1.)

Therefore **IT IS ORDERED** that rehearing of Decision
(D.) 01-09-059 is denied.

This order is effective today.

Dated October 10, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners